

401 KAR 30:020. General provisions.

RELATES TO: KRS Subchapters 224.10, 224.43, 224.99, 40 C.F.R. 260 Subpart A
STATUTORY AUTHORITY: KRS 224.10-100

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 and the waste management provisions of KRS Chapter 224 require the Environmental and Public Protection Cabinet to promulgate administrative regulations for the generation, treatment, storage, recycling and disposal of hazardous wastes and the disposal of solid wastes. This administrative regulation establishes general provisions which apply to the waste management administrative regulations with regard to applicability, scope, exceptions, variances, general prohibitions, compatibility, conflicting provisions, severability, availability and confidentiality of information.

Section 1. Applicability. The waste management administrative regulations established in 401 KAR Chapters 31 to 49 shall apply to the disposal of solid waste and the management of all liquid, semisolid, solid, or gaseous waste defined or identified as hazardous in KRS Chapter 224 or the appropriate administrative regulations by all persons and state and federal agencies who engage in the generation, treatment, storage, or disposal of wastes, including hazardous substances spilled into the environment, that meet the criteria of hazardous waste.

Section 2. Variance. Except as provided in 401 KAR Chapter 38, a variance shall be a written waiver from any provision of the waste management administrative regulations, upon the finding by the cabinet that the absence of the provision shall provide adequate protection to health and the environment in a manner consistent with the purpose of the waste management administrative regulations and KRS Chapter 224.

(1) The cabinet may grant a variance or permit modification from the requirements of the waste management administrative regulations if a waste permit requirement, or the process and equipment used, is determined by the cabinet to be either:

(a) Insignificant as a potential hazard to public health or the environment because of its small quantity; low concentration; physical, biological, or chemical characteristics; or method of operation used; or

(b) Handled, processed, or disposed of pursuant to administrative regulations of another governmental agency, if the administrative regulations of other agencies meet the requirements of the waste management administrative regulations, including federal exemption rule-making actions pertaining to hazardous waste management.

(2) A request for variance from a requirement of the waste management administrative regulations shall be submitted in a report in sufficient detail to satisfy a request from the cabinet to provide the analyses, procedures, controls, and other pertinent data necessary to support the request for variance. The granting of a request by the cabinet shall be in writing and shall specify appropriate conditions such as duration, limitations, and review procedures to provide adequate protection to health and the environment.

(3) The cabinet shall not grant any request for a variance which:

(a) Would make the hazardous waste program less stringent than the federal hazardous waste management program;

(b) Would be in conflict with Kentucky Revised Statutes;

(c) Would be in conflict with a regulatory provision stating that no variance shall be granted;

(d) Would vary the requirements of 401 KAR 47:030; or

(e) Would vary the financial responsibility requirements in a manner conflicting with 401 KAR 34:080, Section 1, or 401 KAR 35:080, Section 1.

Section 3. Compatibility with the Federal Acts. The administrative regulations promulgated pursuant to the waste management provisions of KRS Chapter 224 shall be compatible with federal regulations adopted pursuant to Pub.L. 94-580, the "Resource Conservation and Recovery Act of 1976," as amended through September 1996.

Section 4. Conflicting Provisions. The provisions of the waste management administrative regulations shall be construed as being compatible with and complimentary to each other. If an administrative regulation is found to be contradictory, the more stringent provisions shall apply.

Section 5. Severability. If a provision of KRS Chapter 224 or any administrative regulation promulgated pursuant thereto is found to be invalid, the remaining waste management administrative regulations in 401 KAR Chapters 30 through 49 shall not be affected or diminished thereby.

Section 6. Use of Number and Gender. In accordance with 40 C.F.R. 260.3, as used in 401 KAR Chapters 30 through 49:

- (1) Words in masculine gender shall also include the feminine and neuter genders;
- (2) Words in the singular shall include the plural; and
- (3) Words in the plural shall include the singular.

Section 7. Applicability of Administrative Regulations. (1) At the time of permit issuance, the applicable administrative regulations shall be those waste management administrative regulations which are in effect upon the date of permit issuance except as provided in 401 KAR 47:080, Section 6(3).

(2) Unless otherwise provided in 401 KAR 47:080, Section 6(3), for permit modifications, revocation and reissuance, or termination, the applicable administrative regulations shall be those regulatory provisions which are in effect upon the date that the cabinet makes a final determination (i.e., approval of a permit modification) upon the permit action and are applicable to those specific permit conditions being modified or revoked and reissued. The procedures which shall be used for permit modifications, revocation and reissuance, or termination shall be those regulatory procedures which are in effect upon the date of the cabinet's final determination.

Section 8. Availability of Information; Confidentiality of Information. (1) Any information provided to the cabinet under 401 KAR Chapters 30 through 49 shall be made available to the public to the extent and in the manner authorized by the Kentucky Open Records Act, KRS 61.870 to 61.884, 224.10-212, and 400 KAR 1:060.

(2) Any person who submits information to the cabinet in accordance with 401 KAR Chapters 30 through 49 and 400 KAR 1:060 may assert a claim of business confidentiality or trade secret covering part or all of that information by following the procedures established in 400 KAR 1:060. Information covered by a claim shall be disclosed by the cabinet only to the extent, and by means of the procedures, established in 400 KAR 1:060 and KRS Chapter 61 except that information required by 401 KAR 32:050, Section 3, which is submitted in notification of intent to export a hazardous waste shall be provided to the U.S. Department of State and the appropriate authorities in a receiving country regardless of any claims of confidentiality. If a claim does not accompany the information when it is received by the cabinet, it may be made available to the public without further notice to the person submitting it.

Section 9. Compliance Deadlines. After promulgation of administrative regulations under 401 KAR Chapter 31 identifying by its characteristics or listing any substance as hazardous waste subject to the hazardous waste management administrative regulations, any person generating or

transporting a substance or owning or operating a facility for treatment, storage, disposal or recycling of such substance shall register with the cabinet. The registration shall be filed within ninety (90) days after promulgation or revision of the administrative regulations unless another notification date is specified.

Section 10. Referenced Documents. (1) The subject matter shall be governed by 40 C.F.R. 260.11, effective July 1, 2005.

(2) The documents incorporated by reference in 40 C.F.R. 260.11 (July 2005) and referenced in subsection (1) of this section shall be applicable to 401 KAR Chapters 31 through 49. (Recodified from 401 KAR 2:050; Sections 1 through 5, 3-1-1983; Am. 10 Ky.R. 54; eff. 12-2-83; 12 Ky.R. 684; eff. 2-4-86; 14 Ky.R. 1309; 1767; eff. 3-10-88; 16 Ky.R. 1640; 2169; 2344; eff. 5-8-90; 33 Ky.R. 2375; 3656; 6-13-2007.)